

Eugene T. Franklin [SBN: 124881]
Barbara F. Green [SBN: 150320]
Franklin Employment Law Group
Attorneys at Law
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Hayward, California 94541
Telephone: (510) 538-0969
Facsimile: (510) 538-6502

Attorneys for Plaintiff
Shamaneen Khan

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Shamaneen Khan,

Plaintiff,

vs.

The Permanente Medical Group,
Incorporated, A California Corporation;
SEIU United Healthcare Workers-West, a
California Corporation and DOES 1-50,
inclusive,

Defendants.

Case No.: C08-01783 WHA

**DECLARATION OF EUGENE T.
FRANKLIN IN SUPPORT OF
PLAINTIFF'S REQUEST FOR
ATTORNEYS' FEES
[28 USC § 1447(c)]**

Date: May 29, 2008

Time: 8:00 a.m.

Judge: William H. Alsup

Courtroom: 9, 19th Floor

[Date scheduled for Motion to Dismiss]

Date: June 19, 2008

Time: 8:00 a.m.

Judge: William H. Alsup

Courtroom: 9, 19th Floor

[Date set for Plaintiff's Motion to Remand]

Complaint Filed: March 7, 2008

Removed: April 3, 2008

I, Eugene T. Franklin declare:

1. I am an attorney duly licensed to practice law in all of the court of the State of California, and
I am admitted to practice before the United States District Court, Northern District of California.
I am the attorney of record for plaintiff, Shamaneen Khan in the instant action. All of the matters
set forth herein are personally known to me; and, if called as a witness, I would and could
competently testify thereto.

1 2. I received a Bachelor of Science degree in 1981 from Golden Gate University. I received a
2 Juris Doctor degree from The Boalt Hall School of Law at the University of California in 1985.
3 I became a member of the California State Bar in 1986.

4 3. I have practiced law in California since 1986. From 1986 until 1990, I was a deputy district
5 attorney in Alameda County. I have been in private practice since 1990, and I have been
6 representing plaintiffs in employment discrimination and wrongful termination litigation since
7 1991.

8 4. I am a member of the National Employment Lawyers Association (NELA), and the California
9 Employment Lawyers Association (CELA) and the California Trial Lawyers' Association. I have
10 given CLE accredited lectures about employment discrimination, including sexual harassment at
11 Hayward Bar Association and at CELA conferences.

12 5. As a result of my experience, I am aware of the prevailing hourly rates which are being charged
13 by knowledgeable and experienced attorneys in the field of employment law in the San Francisco
14 Bay Area. Experienced employment lawyers' fees range from approximately \$250 per hour at the
15 low end of the scale to approximately \$450 per hour at the high end of the scale. Attorneys with
16 experience comparable to mine charge their hourly fee at the rate of \$400.00 to approximately
\$450.00.

17 6. Attached are filed copies of the declarations of attorneys Michael Loeb, Phil Horowitz and
18 Deborah Kochan. See exhibits "A," "B" and "C." (All exhibits are being submitted under separate
19 cover) These declarations were provided to me in support of an earlier motion for attorneys' fees
20 in the sexual harassment case of *Parnala v. Plycon Transportation Group, et al.* Case No.: HG 04-
21 189040 (Alameda County Superior Court). The attached copies of attorneys' declarations are
incorporated herein by this reference.

22 7. Judge Frank Roesch of the Alameda County Superior Court awarded plaintiff Parnala \$99,825.
23 My hourly fee, as submitted to Judge Roesch was \$350.00 per hour. See exhibit "D," a copy of
24 Judge Roesch's order dated July 5, 2006.

25 8. I spent sixty (50) hours conducting legal research, writing and editing plaintiff's motion for
26 remand and opposition to defendant UHW's motion to dismiss. My normal and customary billing

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1 rate is \$350.00 per hour. Therefore, plaintiff request \$17,500.00 as reasonable attorney's fees.

2 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
3 correct.

4 Date: May 6, 2008

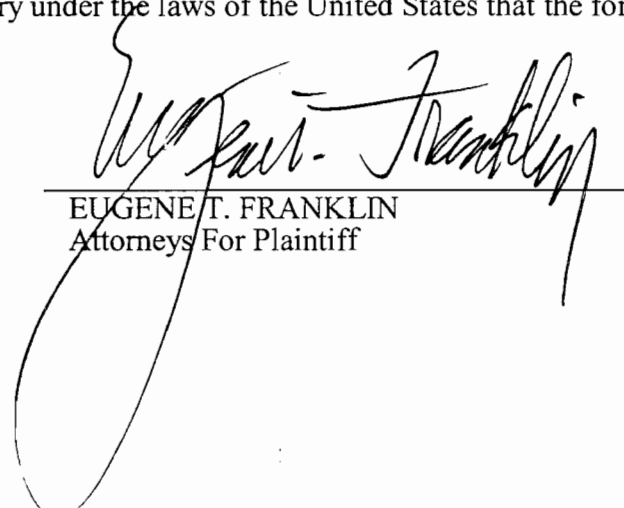

5 EUGENE T. FRANKLIN
6 Attorneys For Plaintiff
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EXHIBIT “A”

1 JAMS
MICHAEL J. LOEB (SBN 61927)
2 Two Embarcadero Center, 15th Floor
San Francisco, CA 94111
3 Telephone: (415) 774-2727
Facsimile: (415) 982-5287
4

FILED
ALAMEDA COUNTY

JUN 08 2006

CLERK OF THE SUPERIOR COURT

By Cynthia Eugene Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
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11 RITA L. PARNALA,

12 Plaintiff,

13 v.

14 PLYCON TRANSPORTATION GROUP, INC.,
BRIAYAN FLORES and DOES 1-50, inclusive,

15 Defendants.
16

No. HG 04-189040

DECLARATION OF MICHAEL J.
LOEB ON PLAINTIFF'S MOTION
FOR ATTORNEYS FEES

Date: June __, 2006
Time: 2:00 p.m.
Place: Dept. 31

17 I, Michael J. Loeb, state, that if called as a witness in this matter, I would testify
18 competently, of my own personal knowledge as follows:

- 19 1. I am a 1974 graduate of Hastings College of the Law, Order of the Coif.
20 2. I practiced in the area of employment and labor law for more than 30
21 years. From 1976 through 1997, I was a lawyer at Crosby, Heafy, Roach and May in Oakland,
22 and a partner from 1983 through 1997. From 1998 through April 28, 2006, I was a partner at
23 McCutchen, Doyle, Brown & Enerson, later Bingham McCutchen, and lead that firm's labor and
24 employment practice department until its merger in July 1, 2006. During my more than 30 years

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DECLARATION OF MICHAEL J. LOEB

1 as a labor and employment lawyer, I litigated more than 300 employment cases, many of which
2 involved allegations of discrimination, harassment, retaliation, and wrongful termination.

3 3. I have mediated more than 150 employment related disputes. On
4 March 17, 2006, I began mediating employment and labor law cases exclusively through JAMS.
5 As of April 28, 2006, I am exclusively an employment and labor law mediator and arbitrator
6 with JAMS.

7 4. I have litigated and mediated cases with plaintiff's lawyer, Eugene T.
8 Franklin, for more than ten years. I have represented employers in defending cases brought by
9 Mr. Franklin involving claims of disability discrimination, wrongful termination, harassment and
10 retaliation. One of these cases involved a significant number of depositions (more than five),
11 motions to dismiss and a motion for summary judgment. Another one of these cases involved a
12 voluntary exchange of information and a pre-lawsuit settlement. I have also, within the past five
13 years, mediated three wrongful termination cases involving Mr. Franklin and his clients, and
14 served as the Early Neutral Evaluator in another case.

15 5. Based on my experience as a litigator and a neutral in cases involving
16 Mr. Franklin, it is my opinion that Mr. Franklin is a very experienced, effective employment
17 litigator who takes excellent depositions and writes succinct, accurate briefs.

18 6. I have reviewed Mr. Franklin's declaration, stating that he received his
19 Juris Doctorate degree from Boalt Hall at the University of California in 1985, and that he has
20 been representing plaintiffs in employment litigation since 1991. Based on my years of
21 experience at Crosby, Heafy, Roach & May and at Bingham McCutchen, and my knowledge of
22 the rates that experienced employment litigators charge their clients, I believe that a lawyer with
23 Mr. Franklin's experience and competence, if working at Bingham McCutchen or another
24 comparable firm, would command a billable rate of between \$425 and \$475 per hour. I am
25 aware that employment partners at Bingham McCutchen who are 1988 or 1989 law school

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1 graduates, who have practiced labor and employment law for approximately the same amount of
2 time as Mr. Franklin, are billed at hourly rates in this range.

3 I declare under penalty of perjury that the foregoing is true and correct.

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5 Dated: May 16, 2006

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JAMS

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By: 

Michael J. Loeb

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EXHIBIT “B”

Franklin Employment Law Group
Eugene T. Franklin #124881
Barbara F. Green #150320
22762 Main Street
Hayward, California 94541
(510) 538-0969

FILED
ALAMEDA COUNTY

JUN 08 2006

CLERK OF THE SUPERIOR COURT
By Cynthia Eugene Deputy

Attorneys for Plaintiff
Rita L. Parnala

SUPERIOR COURT OF CALIFORNIA
ALAMEDA COUNTY

Rita L. Parnala,

Plaintiff,

vs.

Plycon Transportation Group, Inc.,
Briayan Flores and Does 1-50, Inclusive,

Defendants.

No.: HG 04-189040

**DECLARATION OF PHIL HOROWITZ
IN SUPPORT OF PLAINTIFF'S
COUNSEL'S MOTION FOR
ATTORNEYS' FEES**

Date: June __, 2006
Time: 2:00 p.m.
Dept: 31

I, Phil Horowitz, declare and say as follows:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California and in the Northern District of the United States District Court since 1983. If called upon to testify, I could and would testify competently as to the facts of this declaration as said facts are within my personal knowledge.
2. I am a member of the National Employment Laws Association (NELA) and the state-wide California Employment Lawyers Association (CELA). I have served as the Chair of CELA. In addition, I am currently the Secretary of the California State Bar's Labor and Employment Law Section. I have lectured at CELA conventions and for many other lawyer groups.
3. I am familiar with the hourly fee rates that attorneys charge who represent employees in claims of discrimination. Mr. Eugene T. Franklin's request for \$350.00 per hour is reasonable given his almost twenty years as an attorney and his more than fifteen years' experience as an

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DECLARATION OF PHIL HOROWITZ

1 employment lawyer. I charge my fee at the rate of \$375.00 per hour, which is below the market
2 rate for an attorney with my experience.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing
4 is true and correct. Executed on May 17, 2006, at San Francisco, California.

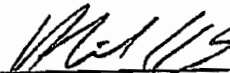
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6 
Phil Horowitz

EXHIBIT “C”

FRANKLIN EMPLOYMENT LAW GROUP
EUGENE T. FRANKLIN #124881
BARBARA F. GREEN #150320
22762 Main Street
Hayward, California 94541
(510) 538-0969

Attorneys for Plaintiff,
Rita L. Parnala

FILED
ALAMEDA COUNTY

JUN 08 2006

CLERK OF THE SUPERIOR COURT

By Cynthia Eugene Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

Rita L. Parnala,

Plaintiff,

vs.

Plycon Transportation Group, Inc., Briayan
Flores and DOES 1 through 50, Inclusive,

Defendants.

Case No.: HG 04 189040

**DECLARATION OF DEBORAH
KOCHAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES**

I, Deborah Kochan, declare as follows:

1. I have personal knowledge of the statements made herein, and if called as a witness, could and would testify competently to them under oath.
2. I am an attorney licensed to practice law in the State of California. I specialize in employment discrimination litigation on behalf of plaintiffs. I submit this Declaration in support of plaintiff's motion for attorneys' fees.
3. I received my B.A. from the University of California at Berkeley in 1985. My J.D. was awarded by Hastings College of the law in 1990, where I was a cofounder of the Hastings Women's Law Journal. I am admitted to practice before the courts of the State of California, the U.S. District Court for the Northern, District of California, and the U.S. Court of Appeal for the Ninth Circuit.
4. During law school I became interested in public interest law and plaintiff's side employment litigation and pursued those interests by clerking at the East Palo Alto Community

1 Law Project in East Palo Alto, Equal Rights Advocates in San Francisco and the Women's Legal
2 Defense Fund in Washington, D.C. After graduating from law school I accepted an associate
3 position with a sole practitioner in Oakland, California who desired to expand his personal injury
4 practice to include plaintiff's side employment litigation. Although a new attorney, from
5 approximately January 1991 through December 1993 I was given primary responsibility for
6 working up all of the employment discrimination cases in the firm, including a case on behalf of
7 three female firefighters against their employer, the City of Napa and the Napa Fire Department.

8 5. In January 1994 I established my own firm along with my partner, Mathew Stephenson, in
9 large part because of our desire to focus all of our time and energy on employment litigation.
10 Since we formed Kochan & Stephenson our practice has been devoted almost exclusively to
11 plaintiff's side employment litigation. Since 1998 I have been an Adjunct Professor at Hastings
12 College of the Law where I teach the Sex Discrimination and Pre Trial Practice seminars. I am
13 listed in Martindale Hubbell with an AV Peer Review rating and my firm is listed in the
14 Martindale Hubbell Bar Register of Preeminent Lawyers. I am currently an active member of
15 the California Employment Lawyers Association and the San Francisco Trial Lawyers
16 Association.

17 6. I estimate that Mr. Stephenson and I have represented plaintiffs in approximately 150 or
18 more employment cases in state and federal trial and appellate courts. We have no customary
19 hourly billing rate in that all of our cases are contingent cases that involve a statutory right to
20 attorneys' fees and our attorneys' fees claims are almost always resolved by settlement.
21 Additionally, as to the cases which have been tried to a judge, jury or arbitrator to a verdict, and
22 in which the plaintiff has prevailed, our fees have been resolved and paid by the defendants
23 without our need to file a fee petition. For example, in 1998 we tried Gonzales v. San Benito
24 Foods (a sexual harassment/discrimination/retaliation case) to a judge in San Benito County.
25 The court found for the plaintiff and in addition to awarding compensatory damages, made a
26 finding of malice supporting an award of punitive damages. Prior to the punitive phase of the
27 trial, however, the case resolved including the matter of attorneys fees. In presenting our fees for
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1 payment to the defendant in connection with the Gonzales case in early 1999, I charged and
2 received \$250 per hour.

3 7. In 2000 and then again in 2002 we had two cases, both subject to binding arbitration, which
4 were tried to two different arbitrators. In both cases the plaintiff was awarded compensatory and
5 punitive damages by the arbitrator. In both cases the matter of attorneys' fees was resolved
6 without the need for a fee petition. In the case that resolved in 2000 I charged and received \$275
7 per hour and in the case that resolved in 2002 I charged and received \$325 per hour.

8 8. Since approximately early 2005, in presenting our fees for payment I have charged and
9 received \$425 per hour, which rate I believe (from my experience and conversations with other
10 employment law attorneys) is commensurate with the prevailing market rates in the Oakland/Bay
11 Area for attorneys of comparable experience and skill.

12 9. My firm has litigated scores of employment discrimination cases and I am aware of the
13 substantial difficulty plaintiff's lawyers face in such actions, including the difficulties of proof. I
14 have been informed of the hourly rates requested by plaintiff's counsel in this action. In my
15 opinion, the hourly rate of \$450 requested by trial counsel Eugene Franklin and \$300 by Barbara
16 Green are justified in that the hourly rates requested are within the prevailing market rates for
17 attorneys of their skills and experience in the San Francisco Bay Area.

18 10. I believe that substantial fee awards are necessary and important to encourage skilled and
19 qualified attorneys to represent plaintiffs in employment discrimination, sexual harassment,
20 retaliation and other public interest cases.

21 11. In my experience the vast majority of employment discrimination victims are unable to
22 compensate a skilled employment attorney on an hourly basis. Such cases are hard fought by the
23 defendants, take a long time and many attorney hours to resolve, often to the exclusion of other
24 cases, and usually involve substantial litigation costs. As a result, even clients with some
25 financial resources cannot afford to pay their attorneys on an hourly basis, and most attorneys
26 must represent victims of employment discrimination on a purely contingent basis, assuming
27 both the substantial risks of the litigation and paying for the substantial out of pocket litigation
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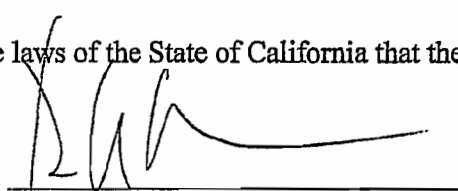
1 expenses. If there is no recovery in the case, the attorneys receive no payment for the many
2 hours worked.

3 12. If attorneys do not receive appropriate compensation, there would be little incentive for
4 attorneys to provide representation on a contingency basis in these important discrimination
5 cases. In my own practice, the expectation of a substantial contingency recovery or statutory fee
6 award wherein I would receive the full value for my hours worked is a major consideration in
7 our decision to accept cases, and to do so on a contingency basis. It is my understanding that
8 plaintiff was represented here on a contingency fee basis. In other words, if plaintiff had lost her
9 trial there would be no attorney fees to the plaintiff's counsel.

10 13. I believe that a multiplier is appropriate in this case because of the difficulty inherent in
11 prevailing in a case involving no percipient witnesses and the fact that this was taken and
12 prosecuted on a contingent basis. In light of all of the above, I believe a multiplier of 2.0 is
13 reasonable.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct.

16 Dated: 5-23-06



Deborah Kochan

EXHIBIT “D”

Franklin, Eugene T.
22762 Main Street
Hayward, CA 94541

Saltzman, Mark
18321 Ventura Blvd.
Ste. 530
Tarzana, CA 91356-6445

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Parnala

Plaintiff/Petitioner(s)

VS.

Plycon

Defendant/Respondent(s)

(Abbreviated Title)

No. HG04189040

Order

Motion for Attorney Fees
Granted

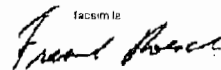
The Motion for Attorney Fees filed for Rita L. Parnala was set for hearing on 07/05/2006 at 02:00 PM in Department 31 before the Honorable Frank Roesch. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Plaintiff's Motion for Attorneys' Fees and Costs is GRANTED. Plaintiff is awarded attorneys' fees of \$99,825 and costs of \$1,564 against Defendant Plycon Transportation Group, Inc., pursuant to Government Code section 12965(b). Defendant's Code of Civil Procedure section 998 Offer of Compromise was silent as to any parties' right to recover costs or attorneys' fees. A Code of Civil Procedure section 998 Offer of Compromise that is silent as to costs and attorneys' fees does not preclude Plaintiff's right to recover such costs and attorneys' fees on entry of judgment. (See Ritzenthaler v. Fireside Thrift Co. (2001) 93 Cal.App.4th 986, 991; Pazderka v. Caballeros Dimas Alang Inc. (1998) 62 Cal.App.4th 658, 670; and Rappenecker v. Sea Land Service Inc. (1979) 93 Cal.App.3d 256, 262-264.)

Dated: 07/05/2006

facsimile


Judge Frank Roesch

Order